

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, FEBRUARY 28, 2008**

BOARD MEMBERS PRESENT: Ms. Milagro Rodriguez, Chair
Mr. Roger Burkhart
Mr. Louis Cernak
Mr. M. Frank Hartsoe
Mr. Daryl Hines
Ms. Anna Jolly
Mr. Satish Korpe
Mr. Rick Linker
Dr. James Mundy
Mr. Chuck Stiff, Secretary
Mr. Linwood Saunders

BOARD MEMBERS ABSENT: Ms. Juanita Garcia
Mr. Danny Sutton
DOH – No current representative named

STAFF PRESENT: Mr. Ray Davenport, Labor and Industry, Commissioner
Mr. Bill Burge, Assistant Commissioner
Mr. Glenn Cox, Director VOSH Programs
Mr. Jay Withrow, Office of Legal Support Director
Mr. Ronald Graham, Health Compliance Director
Mr. John Crisanti, Office of Planning and Evaluation
Manager
Ms. Jennifer Wester, Director, Cooperative Programs
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Senior

OTHERS PRESENT: Mrs. Anne Burkhart
Ms. Donna Chandler, Court Reporter, Chandler & Halasz
Ms. Beverly Crandell, Federal OSHA
Mr. Mark Singer, Virginia Utility & Heavy Contractors
Council
Mr. Steve Vermillion, Associated General Contractors of
Virginia

ORDERING OF AGENDA

Chair Milagro “Milly” Rodriguez called the Board meeting to order at 10:00 a.m. A quorum was present. Ms. Rodriguez then asked for a motion from the Board to approve the Agenda. On proper motion and second the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Chair Rodriguez asked for a motion from the Board to approve the Minutes of the October 18, 2007, Public Hearing and the Regular meeting. Mr. Frank Hartsoe made the motion and Mr. Chuck Stiff seconded it. The motion was carried unanimously by voice vote.

PUBLIC COMMENTS

Chair Rodriguez opened the floor to comments from the public. The first speaker was Mr. Mark Singer, Legislative Representative for the Virginia Utility & Heavy Contractors Council, an organization of approximately 350 members that represent three regional associations in Virginia. This organization primarily deals with road utility, bridge sites and grading contractors. Mr. Singer complimented Mr. Withrow for being extremely responsive and prompt in responding to him. Mr. Singer apologized for missing the previous comment periods. He expressed the following concerns about the propose regulation for Reverse Signal Operation Safety Requirements because it requirements are more stringent than what federal OSHA requires:

- 1) the spreadsheet which showed 15 fatalities in the industry does not provide enough information to reach a conclusion with regard to what’s being proposed; more information is needed regarding the circumstances of these fatalities, i.e., were all the drivers involved CDL certified; were drugs or alcohol involved; specific job site situations involved.
- 2) the proposed regulation would create more problems than it would solve, e.g., exemption language concerning the driver visually determining from outside of he vehicle that no employees are in the backing zone and that no employees will enter the backing zone during reverse operation of the vehicle. He said that the language is confusing. More time is needed to determine what the implications will be in construction and residential areas.
- 3) there are significant cost increases associated with the implementation of the proposed regulation and his concern whether a cost/benefits analysis had been done. This proposal would require a person to be behind every truck that does not have a clear back-up view, therefore, another person would have to assist the driver with the back-up operation. He stated that this could mean using a lot of people at a lot of cost. He said that he does not think the point has been reached where the cost increase can be justified.

- 4) Although there were 15 fatalities in the industry, the proposal is basically saying “let’s substantially increase the number of folks who’ll be standing behind vehicles while they are backing up. “

He finally suggested that the Board consider not moving forward with adopting these regulations at the present time. He added that if the Board feels that these regulations warrant some change in Virginia, which will go beyond what federal OSHA is requiring, then the folks he represents and other industry representatives would very much appreciate the opportunity to sit down and talk with the department and a subset of the Board about some of these issues. He suggested that, perhaps, there is a way that we can improve the situation by adopting portions of this proposal or adopt it fully with some changes which better reflect the concern that his members may have. He reiterated his request that the Board not move forward for the proposed regulation or, if the Board moves forward, that it defer and allow the industry to talk with VOSH a little more about the implications of the proposal.

The next speaker was Mr. Steve Vermillion, Associated General Contractors of Virginia, with about 800 member firms throughout the state. He expressed concerns about the proposed regulation for Reverse Signal Operation Safety Requirements. He urged that the Board grant the VOSH’s request for an extension to the comment period. He apologized for being unaware of the existence of this proposed regulation, and stated that his organization has a lot of interest in this matter.

OLD BUSINESS

Proposed Regulation to Amend Reverse Signal Operation Safety Procedures for Existing General Industry Standard, 1 VAC 25-90-1910.269, and Construction Industry Standards, 16 VAC 25-175-1926.601, .602 and .952, Governing Off-road Vehicles and Equipment; and Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, 16 VAC 25-97

Mr. Jay Withrow, Director of the Office of Legal Support for the Department of Labor and Industry, began by requesting the Safety and Health Codes Board to consider holding an additional 30-day comment period for the proposed amendments concerning the Reverse Signal Operations amendment, pursuant to Va. Code §40.1-22(5).

In summarizing the rulemaking process for the proposed regulation, Mr. Withrow noted that on March 7, 2006, the Board originally adopted the NOIRA, which was published in the *Virginia Register* with a 30-day comment period and no comments were received at that time. He stated that on December 6, 2006, the Board adopted proposed regulatory language which then went through the internal regulatory process and was published in the *Virginia Register* on August 20, 2007, with a 60-day comment period, which ended on October 19, 2007. He added that no comments were received during the public hearing held by the Board on October 18, 2007. He informed the Board that, following the close of the 60-day comment period, the Department received requests from five people requesting an additional opportunity to comment from the following:

P. Dale Bennett, Virginia Trucking Association;
J. R. (Randy) Bush, Virginia Forest Products Association;
Terry Pruitt, Precon Construction Company, Precon Marine, Inc., Precon Development Corporation;
Mark Singer, Virginia Utility & Heavy Contractors Council; and
Steve Vermillion, Associated General Contractors of Virginia

Mr. Withrow called the Board's attention to the briefing package which contained the correspondence received and the Department's response. He stated that since there are issues, the VOSH program would certainly entertain Mr. Singer's suggestion of a meeting to address the issues and concerns addressed in the regulation.

On behalf of the staff of the Department of Labor and Industry, Mr. Withrow concluded by recommending that the Board approve an additional 30-day public comment period for the proposed amendments to Amend Reverse Signal Operation Safety Procedures for General Industry and the Construction Industry, pursuant to Va. Code §40.2-22(5). He continued by stating that the Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

When asked what could be anticipated after the additional 30-day public comment period, Mr. Withrow responded that the Department would proceed as it would after the 60-day comment period: the Department will have a briefing package which summarizes all comments and Department responses, and it will report to the Board on issues raised at the meeting with the commenters to be included as part of the public record. Mr. Withrow informed the Board that the additional 30-day comment period does not begin on today [02/28/08]. He continued by stating that the comment period will begin with publication in the *Virginia Register* which will be a minimum of three weeks from today.

Mr. Withrow informed the Board that since the comments were received following the end of the 60-day comment period, the Board could not legally consider them; however, it would be beneficial to have the additional comment period to allow the late comments to be on the record and to afford the Department the opportunity to get additional comments.

Dr. James Mundy made the motion to accept the Department's recommendation. Mr. Chuck Stiff seconded the motion which was approved by unanimous voice vote.

NEW BUSINESS

Employer Payment for Personal Protective Equipment (PPE); Final Rule

Mr. Glenn Cox, Director of VOSH Programs, on behalf of the Virginia Occupational Safety and Health (VOSH) Program, requested that the Safety and Health Codes Board consider for adoption federal OSHA's final rule for Employer Payment for Personal Protective Equipment, as published in 72 FR 64341 on November 15, 2007.

Mr. Cox explained that the final rule does not involve any additional requirements for PPE, but clarifies that employers are responsible for providing certain PPE at no cost to employees. Mr. Cox informed the Board that this final rule ends much of the confusion about who pays for PPE. He noted that part of OSHA's study estimated that employers currently pay for more than 95 percent of the PPE for their employees; therefore, there should not be that much of a change. Mr. Cox referred to the Appendices in the briefing package which listed items covered and excluded from coverage by the final rule. He also referred to a table in the briefing package which dealt with costs involved with the final rule.

On behalf of the Department of Labor and Industry, Mr. Cox recommended that the Safety and Health Codes Board adopt the final rule for Employer Payment for Personal Protective Equipment, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 1, 2008, and an implementation date of September 1, 2008.

Mr. Linwood Saunders motioned to accept the Department's recommendation. Mr. Frank Hartsoe seconded the motion which was approved by unanimous voice vote.

Updating OSHA Standards Based on National Consensus Standards; Direct Final Rule

Mr. Cox requested the Safety and Health Codes Board to consider for adoption federal OSHA's direct final rule for Updating OSHA Standards Based on National Consensus Standards, as published in 72 FR 71061 on December 14, 2007.

Mr. Cox summarized this direct final rule by stating that this regulation does a little housekeeping. He explained that it is a continuation of federal OSHA's ongoing effort to update references to consensus and industry standard used throughout its rules. He added that there are no costs involved.

On behalf of the Department of Labor and Industry, Mr. Cox recommended that the Safety and Health Codes Board adopt the direct final rule for Updating OSHA Standards Based on National Consensus Standards, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 1, 2008.

Dr. Mundy motioned to accept the Department's recommendation. Mr. Stiff seconded the motion, which was approved by unanimous voice vote.

Notice of Intended Regulatory Action for Amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations

Mr. Ed Hilton, Chief Boiler Inspector, introduced himself as successor to Mr. Fred Barton, who recently retired from the Department. Mr. Hilton began by requesting, on behalf of the Boiler Safety Compliance Program of the Department of Labor and Industry, that the Safety and Health Codes Board authorize the Department to initiate the regulatory process to amend 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations, by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

Mr. Hilton discussed the suggested changes to the Boiler and Pressure Vessel Rules and Regulations. He described several of the changes as updates to conform to the most recent editions of various documents that are incorporated by reference into the Boiler and Pressure Vessel Rules and Regulations. He described the changes to increase fees as addressing the costs of doing business. Mr. Hilton explained that the Department currently charges \$800 for a review for performing work and that it seeks an increase to \$1000 per review. He continued by stating that initially there is a \$20 charge for a certificate and no charge to reprint certificates; however, the Department would like to institute a \$10 fee to reprint certificates to cover administrative costs, i.e., printing, mailing and employee's work-related time.

Mr. Hilton explained that these revisions will not affect employers because most of the suggested changes are necessary to comply with current editions of the documents that are incorporated by reference in the Boiler and Pressure Vessel Rules and Regulations. He added that there have been no fee increases since 1998, and that the \$200 fee increase will affect the approximately 50 "R" Stamp holders in the Commonwealth that have their reviews performed by the Department. He stated that the \$200 increase from \$800 to \$1000 per review will be spread over a three-year period and covers all the repair company activities over the three-year span.

With respect to impact on employees and the Department of Labor and Industry, Mr. Hilton noted that there would be no major changes, but the revisions will affect the health and welfare of the employees and citizens of the Commonwealth, but there would be no impact on the Department of Labor and Industry. He added that the Department would receive slightly more revenue as a result of the increase in the review fees.

Mr. Satish Korpe motioned to accept the Department's recommendation. Mr. Stiff seconded the motion which was approved by unanimous voice vote.

Items of Interest from the Department of Labor and Industry

Ms. Jennifer Wester, Director of the Office of Cooperative Programs, informed the Board about the 13th Annual Virginia Occupational Safety and Health Conference, which will be held at the Renaissance Portsmouth Hotel & Waterfront Conference Center, Portsmouth, VA from June 3-6, 2008.

Items of Interest from Members of the Board

Chair Rodriguez thanked Mr. Roger Burkhart for his service as Board Chairman. She then announced her appointment of Mr. Frank Hartsoe as Secretary of the Board.

Adjournment

There being no further business to come before the Board, Chair Rodriguez requested a motion for adjournment. Mr. Saunders made the motion to adjourn the meeting. Mr. Stiff seconded the motion which was approved by unanimous voice vote. The meeting was adjourned at 10:30 a.m.